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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EDITH DIXON, individually and on)	Case No. 3:15-cv-03298-LB
behalf of all others similarly situated,)	
)	
Plaintiff,)	JOINT DISCOVERY PLAN
)	PURSUANT TO F.R.C.P. 26(F)
vs.)	HON. LAUREL BEELER
)	DATE: OCTOBER 29, 2015
MONTEREY FINANCIAL)	TIME: 11:00 A.M.
SERVICES, INC.,)	Dept: Courtroom C
Defendant.)	
)	
)	
)	

Plaintiff EDITH DIXON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED ("Plaintiff") and Defendant MONTEREY FINANCIAL SERVICES, INC. ("Defendant") jointly submit this report in accordance with Rule 26(f) of the Federal Rules of Civil Procedure.

1 **1. JURISDICTION AND SERVICE**

2 Defendant was served by waiver of service through its counsel of record on
3 July 27, 2015, and filed its Answer on September 24, 2015. The parties agree that
4 his Court has federal question jurisdiction under 47 U.S.C. § 227(b), and further
5 agree that venue is proper.
6

7 **2. FACTUAL STATEMENT OF THE CASE**

8 **Plaintiff:** Plaintiff is informed and believes, and thereon alleges that
9 Defendant contacted Plaintiff on her cellular telephone number ending in -1147,
10 in an attempt to collect an alleged outstanding debt owed. Thereafter, Plaintiff
11 revoked her consent for Defendant to contact her on her cellular phone, yet
12 Defendant continued to place calls to Plaintiff on her cellular phone. Defendant
13 used an “automatic telephone dialing system”, as defined by 47 U.S.C. §
14 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt.
15 Defendant’s calls constituted calls that were not for emergency purposes as
16 defined by 47 U.S.C. § 227(b)(1)(A). Plaintiff explicitly told Defendant to stop
17 calling him, revoking any and all consent to be contacted using an “automated
18 telephone dialing system.”

19 Plaintiff alleges that the calls Defendant placed to Plaintiff’s cellular
20 telephone were placed via an “automatic telephone dialing system,” (“ATDS”) as
21 defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A), and
22 that these telephone calls by Defendant, or its agents, violated 47 U.S.C. §
23 227(b)(1). Plaintiff alleges that such action on the part of Defendant is systemic
24 and widespread, and asserts his claims on behalf of a proposed class of similarly-
25 situated putative class members.

26 **Defendant:** Plaintiff contends that Defendant violated the Telephone
27 Consumer Protection Act, 47 U.S.C. § 227(b)(1), (the “TCPA”) by calling her on
28 her mobile phone without her prior express permission. The Defendant disputes

1 these allegations as the Plaintiff provided her mobile phone number an
2 application for credit thereby consenting to telephone calls on her mobile phone.
3 In addition, it is the Defendant's position that the Plaintiff never revoked the prior
4 express consent she previously provided.

5 As for the class allegations in the Amended Complaint, it is the Defendant's
6 position that because the Plaintiff does not have a meritorious claim against the
7 Defendant, the Plaintiff lacks standing to represent a purported class. Regardless,
8 the class definition in Amended Complaint fails as a matter of law because the
9 purported class is a fail-safe class.

11 **3. LEGAL ISSUES**

12 **Plaintiff:** Plaintiff asserts that no triable issues of material fact exist with
13 regard to Defendant's violation of the TCPA, as Plaintiff revoked consent to be
14 contacted by Defendant, and the calls placed to Plaintiff's phone were made using
15 an ATDS.

16 **Defendant:** Defendant also asserts that there are no triable questions of fact
17 because the Plaintiff provided her mobile phone number on an application for
18 credit thereby consenting to telephone calls on her mobile phone. In addition, the
19 Plaintiff never revoked the prior express consent. In light of the foregoing, the
20 Plaintiff's claim fails as a matter of law.

22 **4. MOTIONS**

23 **Plaintiff:** At this time, it is possible that Plaintiff will file a motion to add
24 other parties if a third-party dialing company comes to light during the discovery
25 process. Plaintiff also contemplates filing a motion for class certification, at the
26 appropriate time, and after Plaintiff has had a reasonable opportunity to conduct
27 discovery. Plaintiff anticipates filing her motion seeking class certification in
28 July, 2015.

1 **Defendant:** The Defendant anticipates it will move for summary judgment
2 pursuant to Fed. R. Civ. P. 56.

3
4 **5. AMENDMENT OF PLEADINGS**

5 At this time, it is possible that Plaintiff will file a motion to add other parties
6 if a third-party dialing company comes to light during the discovery process.

7
8 **6. EVIDENCE PRESERVATION**

9 The parties have reviewed the Guidelines Relating to the Discovery of
10 Electronically Stored Information, and understand their obligations to preserve
11 evidence relevant to the issues reasonably evident in this action.

12
13 **7. INITIAL DISCLOSURES**

14 **Plaintiff:** Plaintiff will produce on October 15, 2015, her initial
15 disclosures, pursuant to the Court's Order and F.R.C.P. 26, which support her
16 claims.

17 **Defendant:** Defendant will produce on October 15, 2015, her initial
18 disclosures, pursuant to the Court's Order and F.R.C.P. 26, which support her
19 claims.

20
21 **8. DISCOVERY PLAN**

22 **Plaintiff:** Plaintiff will be seeking the following categories of documents in
23 discovery. Plaintiff may need additional categories of documents depending on
24 what information is provided to Plaintiff and depending on how Defendant
25 maintains their data:

26 Documentation regarding the alleged autodialer/text campaign conducted
27 by Defendant;

1 Documentation regarding Defendant's outbound dial list generated by any
2 predictive dialer or ATDS to cell phones;

3 Documentation regarding cellular phone numbers that have provided prior
4 express consent to receive text messages from Defendant;

5 Documentation showing Defendant's consent to place debt collection calls
6 using an ATDS, to consumers' cell phones; and

7 Documentation regarding the usage of Defendant's ATDS;

8 Plaintiff intends to depose Defendant's Person Most Knowledgeable
9 regarding the equipment used to place calls to Plaintiff and putative class
10 members, as well as Defendant's policies and procedures regarding outbound
11 calls made to Plaintiff and putative class members.

12 With regard to the written discovery and depositions that Plaintiff intends on
13 conducting, Plaintiff would respectfully submit that no limitations or phases
14 should be imposed on conducting the discovery.

15 Plaintiff proposes a discovery cutoff date of September 30, 2015.

16 **Defendant:** The Defendant intends to seek discovery regarding the
17 Plaintiff's purported revocation of her prior express consent.

18
19 **9. CLASS ACTIONS**

20 This is a purported class action. Plaintiff requests deadline of July 29, 2015
21 for filing of her Motion for Class Certification.

22
23 **10. RELATED MATTERS**

24 At this time, the parties are unaware of any other actions which might
25 relate to the present matter.

26
27 **11. DAMAGES**

28 **Plaintiff:** Plaintiff prays for the following:

1. an award of statutory damages of \$500.00, pursuant to 47 U.S.C. § 227(b)(1), for each and every negligent violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B);
2. an award of statutory damages of \$1,500.00, pursuant to 47 U.S.C. § 227(b)(1), for each and every knowing and/or willful violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B);
3. injunctive relief prohibiting such conduct in the future;
4. any and all other relief that this Court deems just and proper.

Defendant: Not applicable.

12. SETTLEMENT

The parties are in agreement that that settlement discussions will benefit from a developed factual record. The parties request private mediation pursuant to the Local Rules.

13. MAGISTRATE CONSENT

The parties have not mutually agreed to consent to proceeding before a magistrate judge.

14. INDEPENDENT EXPERT OR MASTER

The parties do not believe that this is a case in which the Court should consider appointing a master pursuant to Fed. R. Civ. P. 53 or an independent scientific expert. The parties further agree that this case is not suitable for reference to binding arbitration, or the Judicial Panel on Multidistrict Litigation

15. NARROWING OF ISSUES

1 **Plaintiff:** Plaintiff anticipates that the issues of whether Defendant utilized
2 an ATDS, may be determined by motion, stipulation or agreement. However,
3 Plaintiff does not believe that bifurcation or phasing is necessary or prudent.

4 **Defendant:** Defendant believes that if the Plaintiff would articulate the
5 date and method in which she purportedly revoked consent, the issues in this case
6 could be narrowed.

7
8 **16. EXPEDITED TRIAL PROCEDURE**

9 The parties do not agree that this case can be handles under the Expedited
10 Trial Procedure of General Order No. 64

11
12 **17. SCHEDULING**

13 **Plaintiff:** Plaintiff proposes the following dates for designation of experts,
14 discovery cutoff, hearing of dispositive motions, pretrial conference and trial:

15 Fact Discovery Cut-off	September 30, 2016
16 Last Day to Serve Initial Expert Reports	October 21, 2015
17 Last Day to Serve Rebuttal Expert Reports	November 18, 2016
18 Expert Discovery Cut-Off	December 6, 2016
19 Deadline to File Dispositive Motions	January 13, 2017
20 Pretrial Conference	March 15, 2017
21 Trial (Est. days)	March 21, 2016 – 2-3 Days, 22 Jury Trial Requested
23	
24	
25	

26 **Defendant:**

27 Fact Discovery Cut-off	May 31, 2016
28	

Last Day to Serve Initial Expert Reports	August 31, 2016
Last Day to Serve Rebuttal Expert Reports	September 30, 2016
Expert Discovery Cut-Off	October 31, 2016
Deadline to File Dispositive Motions	December 30, 2016
Pretrial Conference	March 15, 2017
Trial (Est. days)	March 21, 2016 – 2-3 Days, Jury Trial Requested

18. TRIAL

Plaintiff: Plaintiff estimates a 2-3 day jury trial with three witnesses to be called by Plaintiff. Plaintiff's witness list will most likely grow after individuals are identified during the course of discovery. Plaintiff will be represented by Todd M. Friedman at trial.

Defendant: Defendant estimates a 2-3 trial with 1-3 witnesses to be called by the Defendant. Defendant will be represented by Dennis J. Ward and Brendan H. Little at trial.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Plaintiff: Plaintiff has yet to file a notice of interested entities, but knows of no such persons or entities with any such interest in Plaintiff's claims.

Defendant: Defendant knows of no such person or entities with any such interest in Plaintiff's claims.

20. PROFESSIONAL CONDUCT

The parties have met and conferred regarding the Guidelines for Professional Conduct for the Northern District of California. The parties' counsel

of record have been working together cooperatively, professionally and cordially without issue thus far, and do not anticipate that to change in any way.

21. OTHER ISSUES

Plaintiff: None

Defendant: None

Dated: October 22, 2015

Law Offices of Todd M. Friedman, P.C.

By: /s/ Adrian R. Bacon
Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Attorneys for Plaintiff

Dated: October 22, 2015

Lippes Mathias Wexler Friedman LLP

By: /s/ Brendan H. Little
Brendan H. Little, Esq.
Attorneys for Defendant

Signature Certification

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Brendan H. Little counsel for Defendant and that I have obtained Mr. Little's authorization to affix his electronic signature to this document.

Dated: October 22, 2015

Law Offices of Todd M. Friedman, P.C.

By: /s/ Adrian R. Bacon
Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Attorneys for Plaintiff

1 Filed electronically on this 22nd day of October, 2015, with:
2 United States District Court CM/ECF system

3 And hereby served upon all parties

4 Notification sent on this 22nd day of October, 2015, via the ECF system to:

5
6 Dennis J. Ward, Esq.
7 Ropers, Majeski, Kohn & Bentley

8 Brendan H. Little (Admitted Pro Hac Vice)
9 Lippes Mathias Wexler Friedman LLP
10 Attorneys for Defendant

11 By: s/Adrian R. Bacon
12 Adrian R. Bacon